

Court of Appeals, State of Michigan

ORDER

In Re Estate of Clark T Smoke

Docket No. 273114

LC No. 2004-675901-DE

Brian K. Zahra
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

The Court orders that the motion to dismiss is DENIED.

On its own motion, pursuant to MCR 7.216(C), the Court further orders that appellee's counsel is assessed damages in the amount of \$250 for filing this vexatious motion to dismiss. The argument that appellant's brief on appeal was due within 56 days after the court reporter's certificate was filed with the Clerk of this Court is so carelessly developed and devoid of support under the court rules as to render the motion vexatious. The court reporter's certificate merely indicates the date the transcript was ordered from the court reporter, MCR 7.210(B)(3)(a), a fact that appellee's counsel appears to recognize by referring to the certificate as "the transcript request." If the transcript is timely ordered from the court reporter, as it was in this case, the 56-day period for filing appellant's brief does not begin to run until the transcript is filed with the trial court clerk. See MCR 7.212(A)(1)(a)(iii). There is absolutely no basis for appellee's argument that the time for filing appellant's brief began to run when the court reporter's certificate of ordering was filed with the Clerk of this Court. Appellee's counsel is ordered to pay the assessed damages in the amount of \$250 to appellant's counsel within 14 days after the Clerk's certification of this order.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 24 2007

Date

Sandra Schultz Mengel
Chief Clerk